



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230602-0141]

RIN 0648-BL84

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Harvest Levels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in a framework action under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico (Gulf) Fishery Management Council (Council). This final rule revises the commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs) for red snapper in the Gulf exclusive economic zone (EEZ). The purpose of this final rule is to increase the Gulf red snapper ACLs and ACTs consistent with best scientific information available, and to continue to achieve optimum yield (OY) for the stock.

DATES: This final rule is effective *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment, regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at

<https://www.fisheries.noaa.gov/action/modification-catch-limits-gulf-mexico-red-snapper>.

FOR FURTHER INFORMATION CONTACT: Dan Luers, Southeast Regional Office, NMFS, telephone: 727-824-5305, email: *daniel.luers@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the OY from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

On February 28, 2023, NMFS published a proposed rule for the framework action and requested public comment (88 FR 12642). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the management measures described in the framework action and implemented by this final rule is described below.

Unless otherwise noted, all weights in this final rule are in round weight.

Red snapper in the Gulf EEZ is harvested by both the commercial and recreational sectors. The stock ACL for red snapper is equal to the acceptable biological catch (ABC) recommended by the Council's Scientific and Statistical Committee (SSC), and each sector has its own ACL and associated management measures. The stock ACL is allocated 51 percent to the commercial sector and 49 percent to the recreational sector. In 2015, Amendment 40 to the FMP (80 FR 22422, April 22, 2015) divided the recreational ACL (quota) between the Federal charter vessel/headboat (for-hire) component (42.3 percent) and the private angling component (57.7 percent).

In 2020, NMFS implemented state management of red snapper for the private angling component as specified in Amendments 50 A-F to the FMP (85 FR 6819, February 6, 2020). Through these amendments, each Gulf state was allocated a portion of the red snapper private angling

component ACL and was delegated the authority to set the private angling fishing season, bag limit, and size limit. However, each Gulf state was managing the harvest by its private anglers using estimates from its own state data collection program, which, except for Texas, was not directly comparable to the state's ACL. To address this issue, the Council, Gulf States, and NMFS worked to develop and implement calibration ratios that adjusted each state's private angling component ACL so that it could be directly compared to the landings estimates produced by that state's data collection program (87 FR 74014, December 2, 2022).

In 2016, Congress awarded funding to researchers in an effort to independently estimate the population size of red snapper in the Gulf. Commonly known as the "Great Red Snapper Count" (GRSC), this project's primary goal was to provide a snapshot estimate of abundance and distribution of age 2 and older red snapper on artificial, natural, and uncharacterized bottom habitat across the northern Gulf through 2019.

The results of the GRSC and catch projections produced by the NMFS Southeast Fisheries Science Center (SEFSC) using the GRSC estimates of red snapper abundance were made available to the SSC in 2021. The SSC expressed some concerns about using the GRSC findings to recommend catch levels. Specifically, the SSC noted the uncertainty associated with the GRSC biomass estimate, questions about

the productivity of the red snapper stock that are raised by the GRSC findings (that the productivity of the stock appears to be lower than previously assumed), and the declining trend observed in the longstanding NMFS Bottom Longline (BLL) survey. Based on these concerns, and until additional information could be presented related to the SSC's questions about some aspects of the GRSC, the SSC determined that it was not appropriate to use the GRSC-based projections to recommend a new ABC, which constrains the total allowable catch that may be specified by the Council. Instead, the SSC used the GRSC-based projections to recommend a new overfishing limit (OFL) of 25,600,000 lb (11,611,965 kg) but used projections generated using information from the NMFS BLL survey to recommend a new ABC of 14,400,000 lb (6,531,730 kg). The Council adopted these recommendations and specified new commercial and recreational catch limits using the established allocations. These new catch limits were effective on January 1, 2023 (87 FR 74014, December 2, 2022).

At its March 2022 meeting, the SSC reviewed new catch level projections based on an SEFSC analysis that used updated GRSC abundance data for Florida and included an independent study that provided an estimate of red snapper abundance for Louisiana. In summary, as described in the framework action, the SSC determined that the SEFSC projections informed by the GRSC abundance data for Texas,

Alabama, Mississippi, the updated abundance data for Florida, and new abundance data for Louisiana are based on the best scientific information available and should be used for new OFL and ABC recommendations. Therefore, the SSC recommended a new OFL of 18,910,000 lb (8,577,432 kg) and a new ABC of 16,310,000 lb (7,398,092 kg), which is reduced from the OFL based on 30 percent probability of overfishing. The SSC recommended a decrease in the OFL because the total estimate of red snapper (over the age of 2) abundance was reduced from 118 million fish to 85.6 million fish. The SSC recommended an increase in the ABC because the decrease in the scientific uncertainty in the new abundance estimates allowed for a smaller buffer between the OFL and ABC.

Consistent with the Council's practice of setting the red snapper stock ACL equal to the ABC, the SSC's recommendation would result in the red snapper stock ACL increasing from 15,400,000 lb (7,000,000 kg) to 16,310,000 lb (7,400,000 kg). The Council approved the framework action to revise the red snapper harvest limits at its August 2022 meeting.

Management Measures Contained in this Final Rule

The framework action and this final rule revise the red snapper OFL and ABC as recommended by the SSC and increase the red snapper commercial and recreational ACLs and ACTs.

The commercial ACL (commercial quota) increases from 7,854,000 lb (3,562,514 kg) to 8,318,100 lb (3,773,026 kg), and the recreational ACL (recreational quota) increases from 7,546,000 lb (3,422,808 kg) to 7,991,900 lb (3,625,065 kg). This final rule also increases the Federal for-hire component ACL from 3,191,958 lb (1,447,848 kg) to 3,380,574 lb (1,533,403 kg) and increases the Federal for-hire component ACT from 2,904,682 lb (1,317,542 kg) to 3,076,322 lb (1,395,396 kg). In addition, this final rule increases the private angling component ACL from 4,354,042 lb (1,974,960 kg) to 4,611,326 lb (2,091,662 kg) and increases the private angling component ACT from 3,483,234 lb (1,579,968 kg) to 3,689,061 lb (1,673,330 kg).

This final rule increases the state specific private angling component ACLs for each of the Gulf States. Each state's ACL listed below is consistent with the allocation established in Amendment 50A and the state specific calibration ratio implemented in January 2023. Alabama's private angling component ACL increases from 558,200 lb (253,195 kg) to 591,185 lb (268,157 kg). Florida's private angling component ACL increases from 2,069,053 lb (938,507 kg) to 2,191,315 lb (993,964 kg). Louisiana's private angling component ACL increases from 882,443 lb (400,269 kg) to 934,587 lb (423,922 kg). Mississippi's private angling component ACL increases from 59,354 lb (26,923 kg) to 62,862 lb (28,514 kg). Finally, Texas's private angling

component ACL increases from 270,386 lb (122,645 kg) to 286,363 lb (129,892 kg).

Measure Contained in This Final Rule not in the Framework Action

In addition to modifying the Gulf red snapper harvest level as specified in the framework action, this final rule revises language related to the red snapper Federal for-hire component quota (50 CFR 622.39(a)(2)(i)(B)) and the red snapper Federal for-hire component ACT (50 CFR 622.41(q)(2)(iii)(B)). Since 2015, when the recreational ACL (quota) was allocated between the Federal for-hire and private angling components, these provisions have specified that the Federal for-hire quota and ACT apply "to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year." (84 FR 24832 May 1, 2015). This language was intended to prohibit persons with vessels issued Federal for-hire permits from transferring those permits off the vessels and then fishing for red snapper under the private-angling component catch limits during the same fishing year. To clarify this prohibition, NMFS added the following language in the final rule implementing Amendments 50A-F (85 FR 6819, February 6, 2020): "A person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in

or from the Gulf EEZ when the Federal charter vessel/headboat component is closed." However, in that final rule, NMFS mistakenly referred to "the Gulf EEZ," which is inconsistent with the 2015 language because it improperly suggests that persons aboard these vessels could harvest red snapper from state waters when the for-hire component is closed and, thus, allow the type of activity that the prior sentence was intended to prohibit. This final rule removes "EEZ" from that sentence in both 50 CFR 622.39(a)(2)(i)(B) and 50 CFR 622.41(q)(2)(iii)(B) to reflect that the harvest limitation applies to the entire Gulf (Federal and state waters).

Comments and Responses

NMFS received comments from 11 individuals or fishing organizations on the proposed rule for the framework action. Four comments were in support of the proposed rule and two comments were opposed to the proposed rule. Four other comments were not specific in their opinion on the proposed rule, but advocated for careful consideration and deep study when making changes to catch limits. One commenter made a suggestion related to how increases in the commercial quota should be distributed, but this suggestion is outside the scope of this action.

Specific comments related to the proposed rule and the framework action are grouped as appropriate and responded to below.

Comment 1: NMFS should determine whether the framework action would have a significant economic impact on smaller businesses, and on how it would affect local communities. The final rule may need to be modified based on these considerations.

Response: NMFS and the Council conducted thorough economic analyses for this framework action consistent with the requirements of the National Environmental Policy Act, the Magnuson-Stevens Act, Executive Order 12866, and the Regulatory Flexibility Act. These analyses, which are contained in the framework action and are described in the proposed rule, showed that the increases in the total, sector, and recreational component ACLs for red snapper would have positive economic effects in terms of increased producer surplus for fishing businesses (commercial and potentially for-hire), increased allocation value for red snapper IFQ shareholders, and increased consumer surplus for recreational anglers and seafood consumers. The estimates included in the framework action showed that economic value would increase by at least \$1.58 million for the commercial sector and \$7.95 million for the recreational sector, for a combined increase in net economic benefits of \$9.52 million per year. These estimates pertain to the red snapper component of the FMP as a whole, and community-level estimates are not available. However, NMFS did identify and discuss which

communities are most likely to be affected by the action in the framework action and the proposed rule.

Comment 2: NMFS should not increase the red snapper catch limits at this time. Red snapper are not as abundant as they were in the past. NMFS should study the population for a few more years to better understand population growth before making these changes. No regulations should be changed without deep study and careful consideration of future consequences.

Response: NMFS disagrees that the catch levels should not be changed at this time. Maintaining the current red snapper catch levels is not consistent with the best scientific information available, which indicates that the red snapper stock can support higher catch limits. The current red snapper catch limits were implemented through the final rule for a framework action that was effective January 1, 2023 (87 FR 74014, December 2, 2022). In that framework action, NMFS set the OFL for red snapper based on results of the GRSC and recommendations from the Council's SSC, which estimated the stock biomass of Gulf red snapper was approximately three times greater than the previous biomass estimate. The SSC reviewed the GRSC projections at its March 2021 meeting, and determined that it was appropriate to use the GRSC results to recommend an OFL for of 25,600,000 lb (11,611,965 kg). However, some limitations and caveats of the study were identified by the SSC that

warranted further investigation, and thus, the SSC made an ABC recommendation based on NMFS BLL survey, which had been used in the past to set catch limits, rather than the GRSC. This resulted in an ABC recommendation of 15,400,000 lb (7,000,000 kg).

After the SSC's ABC recommendation, some of the limitations and caveats associated with the GRSC were addressed through several research studies, and this new information was provided to the SSC at its March 2022 meeting. The updated information included: 1) a revised estimate of red snapper abundance in waters adjacent to Louisiana that was considered by the SSC to be more indicative of red snapper abundance than the GRSC, and 2) a post-stratified re-analysis of GRSC data for Florida using different depth bins than what were originally used in the GRSC. Based on this new estimate, the SSC determined the interim analysis suitable for providing catch advice and recommended decreasing the OFL from 25,600,000 lb (11,611,965 kg) to 18,910,000 lb (8,577,432 kg) and increasing the ABC from 15,400,000 lb (7,000,000 kg) to 16,310,000 lb (7,398,092 kg). These recommendations reflect a decrease in scientific uncertainty in the new estimates, which allows for an increase in the ABC despite the decrease in the OFL.

Comment 3: The framework action and the proposed rule do not adequately account for discards, especially in the

recreational sector. The framework action and the proposed rule do not quantify the expected discards, which makes it difficult for the public to assess impacts from this action.

Response: NMFS disagrees that this rule does not adequately account for discards. NMFS recognizes that the proposed rule did not quantify expected discards, because discards are estimated based on fishing effort for each sector, and are difficult to quantify with precision. However, the revised catch limits do account for discards because they are based on the most recent stock assessment, completed in 2018, which included information about discards, and updated information about red snapper abundance that indicated that the stock can support additional harvest with the associated discards. As explained in the framework action, the increase in the catch limits is not expected to change how the reef fish fishery is prosecuted overall, or the manner in which red snapper fishing takes place. Thus, the rates at which red snapper are discarded by the commercial and recreational sectors are not expected to change, but the increased catch limits are expected to result in a change in the numbers of discarded fish proportional to the fishing effort necessary to harvest the increased catch limits.

Comment 4: The Council is unbalanced and biased toward the recreational sector, and this unbalance has resulted in

the increased catch limits in this rule at a time when there is evidence that the health of the red snapper stock is in decline.

Response: The sector balance on the Council is outside the scope of the rule, and statements about decisions a council with a different balance would make are speculative. However, NMFS notes that Council members are trustees of the Nation's fishery resources and each Council member must take an oath of office in which they "promise to conserve and manage the living marine resources of the United States of America by carrying out the business of the Council for the greatest overall benefit of the Nation" (50 CFR 600.220). Council members must also adhere to high standards of ethical conduct (50 CFR 600.225). Therefore, NMFS expects Council members to make decisions that are best for the fishery resources as a whole. Further, regardless of who sits on the Council, NMFS must determine whether the framework action is consistent with the Magnuson-Stevens Act and other applicable law, and NMFS has determined that the increased catch limits for all sectors will prevent overfishing while achieving optimum yield and are supported by the best scientific information available.

Comment 5: The proposed rule fails to account for the fact that there have been *de facto* reallocations of red snapper harvest at several levels since 2018: from the commercial to the recreational sector, from the for-hire

component to the private angling component, and from certain Gulf states to other Gulf states.

Response: NMFS disagrees that “*de facto* allocations have occurred.” However, NMFS acknowledges that since 2018, when the Gulf States began managing private angling harvest of red snapper, there have been overages of the private angling component ACL resulting from the differences between data from the state surveys used to monitor harvest and the Federal survey data used to establish the catch limits. However, on January 1, 2023, NMFS implemented a final rule that modified the state-specific red snapper private angling component ACLs using calibration ratios adopted by the Council (87 FR 74014, December 2, 2022). These calibration ratios allow each state’s landings estimates to be compared directly to that state’s ACL and are expected to prevent the noted overages. Furthermore, the proposed rule did account for all red snapper harvest (commercial, for-hire, and private angling) regardless of the specified allocations. Thus, this increase in the total allowable harvest is based on the best scientific information available on the health and abundance of the red snapper stock taking into account past harvest, including since 2018.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that

this final rule is consistent with the framework action, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995. A description of this final rule, why it is being considered, and the purposes of this final rule are contained in the preamble and in the **SUMMARY** section of this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. Public comments relating to socio-economic implications and potential impacts on small businesses are addressed in the response to *Comment 1* in the **Comments and Responses** section of this final rule. No comments were received regarding this

certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Annual catch limits, Fisheries, Fishing, Gulf, Red snapper, Reef fish, Quota.

Dated: June 5, 2023.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 622 as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.23, revise paragraph (a)(1)(ii) to read as follows:

§ 622.23 State management of the red snapper recreational sector private angling component in the Gulf EEZ.

(a) * * *

(1) * * *

(ii) *State private angling component ACLs.* All ACLs specified below are in round weight and are consistent with monitoring under the respective state's reporting system. Equivalent ACLs, consistent with monitoring under the Federal reporting system, are provided, as applicable. If a state's delegation is suspended, as described in this paragraph (a)(1), the Federal equivalent ACL, or for the Texas regional management area the ACL in paragraph (a)(1)(ii)(E) of this section, applies in the EEZ off that state.

(A) *Alabama regional management area* - 591,185 lb (268,157 kg); Federal equivalent - 1,212,687 lb (550,066 kg).

(B) *Florida regional management area* - 2,191,315 lb (993,964 kg); Federal equivalent - 2,066,889 lb (937,525 kg).

(C) *Louisiana regional management area* - 934,587 lb (423,922 kg); Federal equivalent - 881,686 lb (399,926 kg).

(D) *Mississippi regional management area* - 62,862 lb (28,514 kg); Federal equivalent - 163,702 lb (74,254 kg).

(E) *Texas regional management area* - 286,363 lb (129,892 kg).

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3. In § 622.39, revise paragraphs (a)(1)(i) and

(a) (2) (i) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) Commercial quota for red snapper - 8,318,100 lb
(3,773,027 kg), round weight.

* * * * *

(2) * * *

(i) *Recreational quota for red snapper-(A) Total recreational.* The total recreational quota is 7,991,900 lb
(3,625,065 kg), round weight.

(B) *Federal charter vessel/headboat component quota.*
The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. A person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf when the Federal charter vessel/headboat component is closed. The Federal charter vessel/headboat component quota is 3,380,574 lb (1,533,403 kg), round weight.

(C) *Private angling component quota.* The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter

vessel/headboat permit for Gulf reef fish any time during the fishing year. The private angling component quota is 4,611,326 lb (2,091,662 kg), round weight.

* * * * *

4. In § 622.41, revise the paragraph (q) (2) (iii) (B) and the last sentence in (q) (2) (iii) (C) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) * * *

(2) * * *

(iii) * * *

(B) *Federal charter vessel/headboat component ACT.* The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. A person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf when the Federal charter vessel/headboat component is closed. The component ACT is 3,076,322 lb (1,395,396 kg), round weight.

(C) * * * The component ACT is 3,689,061 lb (1,673,330 kg), round weight.

* * * * *